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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/069,402	12/09/2002	Christophe Dauga	012237-0290736	3625
909	7590	11/16/2006	EXAMINER	
PILLSBURY WINTHROP SHAW PITTMAN, LLP			SAADAT, CAMERON	
P.O. BOX 10500			ART UNIT	PAPER NUMBER
MCLEAN, VA 22102			3714	

DATE MAILED: 11/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/069,402

Applicant(s)

DAUGA ET AL.

Examiner

Cameron Saadat

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10/16/2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>10/16/2006</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

In response to amendment filed 10/16/2006, claims 1-20 and newly added claim 21 are pending in this application.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-3, 5-12, 15-21 are rejected under 35 U.S.C. 102(e) as being anticipated by Syrowicz et al. (US Patent Application Publication 2003/0060810 A1; hereinafter Syrowicz).

This holding, incorporated herein, is maintained from the prior action for the cited claims as amended. Response to the applicant's remarks are provided below and incorporated herein.

Regarding claim 1, Syrowicz discloses a process for applying cosmetic products on at least part of a human body, comprising the steps of: taking an image of a human body part to be treated, analyzing local characteristics of the part from the image, and utilizing a processor 12 to control a robotic arm 28 for applying suitable cosmetic products over the part according to the local characteristics, wherein the robotic arm is controlled by at least one signal generated on the basis of the analysis of the local characteristics. *See ¶'s 7,18, 29.*

Regarding claim 2, Syrowicz discloses a step of recognizing the local visual characteristics and of applying makeup products according to the local characteristics. *See ¶'s 7,18, 29.*

Regarding claim 3, Syrowicz discloses steps of defining particular areas of the body part and of applying products successively over the particular areas. *See ¶18.*

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Regarding claim 5, Syrowicz discloses that the local characteristics are monitored immediately after the application of the cosmetic product. *See Fig. 3, S22-28.*

Regarding claim 6, Syrowicz discloses application of cosmetic product carried out by a head 20.

Regarding claim 7, Syrowicz discloses that a distance between the head and the body part is monitored in real time. *See ¶ 26.*

Regarding claim 8, Syrowicz discloses monitoring of local characteristics immediately after the application of the cosmetic product is carried out using the head. *See Fig. 3, S22-28.*

Regarding claim 9, Syrowicz discloses that the body part is reconstructed three-dimensionally in order to obtain a three-dimensional representation. *See ¶ 16.*

Regarding claim 10, Syrowicz discloses treatment product that are applied by a wipe impregnated with the product to be applied. *See ¶ 29.*

Regarding claim 11, Syrowicz discloses at least one digital image of the human body part. *See ¶ 18.*

Regarding claim 12, Syrowicz discloses that the digital image is digitized. *See ¶ 18.*

Regarding claim 15, Syrowicz discloses a means of positioning the body part, a means of taking images, a means of analyzing images in order to obtain the local characteristics of said part, and a means of applying makeup products over the part according to the local characteristics. *See ¶'s 7, 18, 29.*

Regarding claim 16, Syrowicz discloses that the application means is supported by a robotic arm 28 which is articulated in order to be capable of following the body part.

Regarding claim 17, Syrowicz discloses that the application means comprises at least one nozzle capable of spraying a treatment product, said head being of the piezoelectric. *See ¶ 29.*

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Regarding claim 18, Syrowicz discloses means 26 for controlling the position of the application means 28 with respect to the part of the area to be treated

Regarding claim 19, Syrowicz discloses means for automatically controlling the total amount and the partial amounts of each product according to the visual characteristics desired. *See ¶ 29.*

Regarding claim 20, Syrowicz discloses a computer program comprising program code means to implement the steps of the cosmetic treatment, when the program runs on a computer 12. *See Figs. 2-3.*

Regarding claim 21, Syrowicz discloses a process for applying cosmetic products, wherein the cosmetic product is makeup or dye. *See ¶ 16 and 29.*

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 4, and 13-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Syrowicz et al. (US Patent Application Publication 2003/0060810 A1; hereinafter Syrowicz) in view of Lehmann et al. (USPN 6,575,751; hereinafter Lehmann).

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Regarding claim 4, Syrowicz discloses all of the claimed subject matter with the exception of explicitly disclosing a step of storing the products used and the visual characteristics obtained. However, Lehmann teaches a cosmetic treatment system wherein product treatment information and patient information is stored so that a physician may access and analyze patient history data in order to prescribe proper treatment (Col. 25, lines 3-25; Col. 4, line 66 – Col. 5, line 13. Thus, in view of Lehmann, it would have been obvious to one of ordinary skill in the art to modify the storage device described in Syrowicz, by storing product and visual patient history information, in order allow a physician to access and analyze patient history data in order to prescribe proper treatment.

Regarding claims 13 and 14, Syrowicz discloses all of the claimed subject matter with the exception of explicitly disclosing that (as per claim 13) the image taking and application steps are carried out in a first zone, and the analysis step is carried out in a second zone distinct from the first zone; (as per claim 14); wherein the application step is carried out in a third zone distinct from the first and second zones; wherein the zones communicate via Internet. However, Lehmann teaches a cosmetic treatment system wherein the steps of capturing an image, analysis, and application step are carried out in remote locations via Internet (Col. 4, line 1 – Col. 6, line 40). Hence, in view of Lehmann, it would have been obvious to an artisan to modify the cosmetic treatment described in Syrowicz, by providing the steps of capturing an image, analyzing the image, and providing treatment at various remote locations, in order to allow a physician to access information regarding patient history data and treatment data and further collaborate with others regarding patient and treatment data, regardless of patient's physical location.

Response to Arguments

The amended claims overcome the rejection under 35 U.S.C. 112 2nd Paragraph set forth in office action mailed 5/10/2006. Accordingly, the rejection has been withdrawn.

Applicant's arguments filed 10/16/2006 have been fully considered but they are not persuasive. Applicant emphasizes that Syrowicz fails to teach or suggest any method for applying cosmetic products,

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and supports this position by noting that the terms “cosmetic” and “makeup” are absent from the reference.

The examiner disagrees with this position. It is noted that claim one describes a process for applying cosmetic products. According to Merriam-Webster Dictionary, “cosmetic” is defined as: something that is cosmetic: as a: a cosmetic preparation for external use b plural: superficial features. Accordingly, Syrowicz discloses a system for enhancing a person’s appearance and specifically teaches the use of a lasers or a device that pours a chemical substance to treat undesired presences or abnormalities, such as moles, tattoos, pimples, scar tissue, warts, and freckles. *See* ¶ 23,29. Thus, Syrowicz explicitly discloses the claimed feature of applying a cosmetic product, since Syrowicz describes steps of applying a chemical substance (a cosmetic preparation) to a person for enhancing his/her external appearance.

In addition, dependent claim two describes a process for applying makeup products. According to Merriam-Webster Dictionary, “makeup” is defined as: cosmetics used to color and beautify the face or other parts of the body. In accordance, Syrowicz describes the feature of applying a cosmetic preparation for external use (¶ 23,29) to beautify various parts of a human body, wherein color is a factor in application of the cosmetic product. For example, the color of a tattoo may be factored in determining the type/amount of cosmetic applied to a person in order to change the color of the person’s skin back to normal.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action


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is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cameron Saadat whose telephone number is (571) 272-4443. The examiner can normally be reached on M-F 9:00 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Olszewski can be reached on (571)272-6788. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Cameron Saadat 
November 7, 2006


KATHLEEN MOSSER
PRIMARY EXAMINER